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TITLE:

LOCAL PROGRAMS

APPROVED BY:


 PATRICIA L. JONES

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SUBJECT AREA:

CHAPTER 17 - LOCAL PROGRAMS

ISSUING UNIT:

OFFICE OF APPRAISALS AND LOCAL PROGRAMS

SUMMARY OF CHANGES: Revises Section 17.05.00.00 and updates the Table of Contents.

PURPOSE

This manual change revises and clarifies the procedures for Local Agency Qualification to perform work where there is federal aid and/or the project is on the State Highway System. Requirements are added for Local Public Agencies to provide the Department with work plans, timelines and milestones, and staffing plans for all projects on the State Highway System for review and concurrence. Specific requirements for Local Agency staff training and experience are included.

EFFECTIVE DATE

Immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY**Chapter****Remove Old Pages****Insert New/Revised Pages**

Remove the following in its entirety:

Replace with the following in its entirety:

17 - Sections

Table of Contents (6/2002)

Table of Contents (REV 9/2004)

17.05.00.00 (6/2002)

17.05.00.00 (REV 9/2004)

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17.05.00.00 - LOCAL AGENCY QUALIFICATIONS

17.05.01.01 Qualifications - General

Federal regulations (23 CFR 710.201) assign the Department the overall responsibility for the acquisition of right of way on all federal-aid highway projects and also require the Department to have a right of way organization adequately staffed, equipped, and organized to meet this responsibility. A Local Public Agency (LPA) may acquire right of way on federal-aid projects only if the Local Public Agency is qualified in accordance with this manual section, or meets the requirements under Section 17.05.07.01, "Nonqualified LPAs - Options." Further, unless State forces are performing the right of way activities, the Department's policy requires using only qualified Local Public Agencies, or their qualified consultants, for locally funded projects on the State Highway System, regardless of whether the projects have federal aid. Note: For projects on the State Highway System, right of way work performed by other than the Department must be funded with "Local Agency" funds.

Department procedures for qualifying LPAs to perform the work authorized by their level of certification for projects with federal funding, both on and off the State Highway System, are detailed in this section. As part of the qualification process, the Department reviews organization charts and education and experience levels of staff. The accounting system of the LPA must be evaluated to determine its ability to accommodate segregation of federally participating and nonfederally participating activities. For projects on the State Highway System, the LPA must submit for review and concurrence, on a project-by-project basis, work plans, timelines with milestones, and staffing plans. Selection criteria, including education and experience requirements, have also been developed for evaluating the qualifications of consultants to work for LPAs. These selection guidelines are discussed in Section 17.06.00.00, "Consultant Qualifications."

NOTE: The Department is charged with the responsibility for imposing sanctions in cases of material noncompliance with State and Federal law and requirements. Sanctions may include the loss of qualification status as well as loss of some or all federal funding for the project.

17.05.01.02 LPA Qualification Requirements

LPAs may be qualified to perform all right of way functions or only for individual functions (such as acquisition), depending on the qualifications of their staff and number of staff available to perform the technical work and subsequent reviews.

To be qualified, an LPA must:

- Be adequately staffed, trained, and organized to do right of way work properly and timely,
- AND
- Agree to conform to Department policies and procedures in order to meet state and federal requirements.

The above staffing requirements may be met by furnishing a staffing and organization chart, including duty statements and résumés of staff's experience.

It is the Region/District's responsibility to determine if the LPA is adequately staffed and has the necessary expertise at all levels of staff involvement. The Coordinator must document these determinations to certify an agency as qualified, and notify the LPA of qualification approval and recertification requirements.

When work is to be performed on the State Highway System, the Local Public Agency must provide current staffing information along with work plans and timelines with milestones on a project-by-project basis. The Authorizing Document for the project triggers the need to begin the qualification process. The timing for the review will coincide with the initiation of the Draft Cooperative Agreement for the project. If the plans do not allow adequate staffing or time for completing the right of way activities, then the Department will either suggest modifications or request that the LPA submit revised plans and timelines in order for the LPA to comply with State and Federal law and requirements.

17.05.01.03 **Levels of Qualification for LPAs**

The LPA may have experienced staff, but not in sufficient number to be qualified for every right of way function. The following levels of qualification can be obtained with prior Department's Region/District approval:

- Level 1 - Staff is qualified to do technical work in one or more specific functional areas. These areas will be shown in the qualification approval. As an example, some smaller rural agencies have sought approval to perform only appraisal or acquisition functions. Level 1 approvals are good for up to three years and for projects "ON" the State Highway System, they require review and approval on a project-by-project basis.
- Level 2 - Staff is qualified to do technical work in some but not all functional areas. There is sufficient staff to perform these functions on more than one project at a time. Level 2 approvals are good for up to three years and for projects "ON" the State Highway System, they require review and approval on a project-by-project basis.
- Level 3 - Staff is large enough and qualified to do technical work in all functional areas. Level 3 approvals are good for up to three years and for projects "ON" the State Highway System, they require review and approval on a project-by-project basis.

17.05.02.01 **Procedures for Obtaining Qualification Status**

- A. The LPA contacts the Region/District Right of Way Coordinator requesting approval of qualification status.
- B. The Region/District meets with the LPA to explain state and federal requirements and what must be done to become qualified. A Right of Way Headquarters Local Programs representative may participate in the meeting if requested by the Region/District. The Region/District should see that the LPA has all needed material, e.g., the Caltrans *R/W Manual*, the FHWA *Right of Way Project Development Guide*, any necessary policy and procedure memos, and current copies of Titles 23 and 49 of the Code of Federal Regulations (CFR).
- C. The LPA subsequently submits its organizational charts, staff résumés, duty statements, and agrees to adopt Caltrans procedural manuals for right of way activities on federal-aid and/or State Highway System projects. The LPA shall maintain sufficient access to Caltrans procedural manuals, either through hard copies, Internet access, or the 2-CD set provided by Caltrans Local Assistance so as to provide adequate direction to right of way employees on how to perform their assigned duties.

- D. The Region/District will then conduct its investigation to determine if the LPA maintains access to current Caltrans procedural manuals and operates in conformance with state and federal requirements. This review will include an evaluation of the LPA's personnel to determine if they are adequately trained and experienced in right of way activities to perform to Department standards. Also, Caltrans Audits and Investigations' Accounting will evaluate the LPA's accounting systems to determine whether it meets requirements. The Department's experience with the LPA may be satisfactory and, thus, an audit evaluation may not be required. Regions/Districts should only initiate requests for audit evaluations when circumstances dictate, then the request should be processed through HQ R/W Local Programs. See 17.05.03.01.

17.05.02.02 Staff Training and Experience Requirements

Region/District must review LPA staff résumés and staff experience as a component of determining the LPA's level of qualification. Staff must have experience in government acquisitions with Uniform Act requirements. Part of the review includes review of sample work products, including timelines and completion of work product. Appropriate consideration should be given to references and past performance, including responsiveness to agency direction. Qualification evaluation criteria for LPA staff performing right of way activities must be appropriate for the functions under consideration for qualification. Educational background must include technical/professional training with particular emphasis on real estate related courses. Examples of education and training are:

- Successfully completed coursework at an accredited college in Real Estate Principles and Practices, Real Estate Law, Real Estate Appraisal.
- Real Estate Certification from an accredited college.
- Successfully completed coursework from professional organizations such as IRWA or the Appraisal Institute, e.g., Appraisal Principles, Appraisal of Partial Acquisitions, Uniform Standards of Professional Appraisal Practices, Communication in Real Estate Acquisition, Reading Property Descriptions, etc.
- Professional Designations, such as SR/WA Designation or MAI Designation.
- Licenses such as Real Estate Brokers License or Real Estate Sales License.
- Certification for Real Estate Appraisers as issued by the Office of Real Estate Appraisers.

Qualification evaluation criteria for LPA staff performing right of way activities include the following experience/professional background considerations for specific functional areas:

- To perform Appraisal work, the LPA employee must have:
 - Training and experience in appraisal of rights for eminent domain purposes.
 - Knowledge of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and State eminent domain law.
 - Successful completion of appropriate coursework from an accredited college and/or professional organization, for example: Appraisal of Partial Acquisitions, Principles of Real Estate Appraisal, Easement Valuation, Uniform Standards of Professional Appraisal Practices, etc.
- To perform Acquisition work, the LPA employee must have:
 - Training and experience in the acquisition of property rights for eminent domain purposes.
 - Knowledge of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and State eminent domain law.
 - Successful completion of appropriate coursework from an accredited college and/or professional organization, for example: Communication in Real Estate Acquisition, Reading Property Descriptions, Eminent Domain Law, Legal Aspects of Easements, etc.
 - A real estate license is also helpful, but not necessary for an employee of a Local Public Agency.

- To perform Relocation work, the LPA employee must have:
 - Training and experience in relocation for eminent domain purposes.
 - Knowledge of the Uniform Relocation Assistance and Real Property Acquisition Policies Act and State eminent domain law.
 - Successful completion of appropriate coursework from an accredited college and/or professional organization, for example: Relocation Assistance, Business Relocation, Mobile Homes Relocation, Advanced Relocation Assistance, etc.
- To perform Utilities work, the LPA employee must have:
 - Training and experience in preparing utility relocation estimates based on construction in the manner proposed, coordinating work to positively locate underground utility facilities including all High/Low risk utility facilities within the project limits.
 - Understand the determination of liability for cost of utility relocation and responsibility. Obtain and analyze data to allocate cost between the utility owner and local agency for all required utility adjustment work and to clearly document, support and set forth the basis of this finding in a Report of Investigation.
 - Training and experience in preparing Utility Agreements between the utility owner and local agency.
 - Training and experience in preparing Notices to Owner for utility facility adjustments.
 - Knowledge of Local, State and Federal laws, policies and procedures that deal with utility relocation.

17.05.02.03 **Qualification Questionnaire**

Historically, agencies were qualified only after answering an extensive questionnaire that covered all aspects of their organizations, policies, and staff experience. Completing the questionnaire is no longer a requirement, but we have included it as an information exhibit (see Exhibit 17-EX-12, Qualification Questionnaire) to simultaneously assist LPAs requesting qualification and Caltrans Right of Way Local Programs staff as an illustration of the depth of experience we are seeking for LPA qualification. At the same time, the questionnaire provides a convenient framework to help structure the interview and assessment of the applicant's level of qualification.

17.05.03.01 **Caltrans Audits and Investigations**

Caltrans Audits will evaluate an LPA before the agency will be approved for qualification. The primary objective is to determine if the LPA's accounting system is capable of accumulating and segregating reasonable and allowable project costs. Specifically, Audits evaluates the LPA's billing procedures, procurement procedures, project management, internal controls, and accounting policies and procedures to ensure the LPA's right of way accounting procedures are in compliance with Department's fiscal requirements for Locally Administered Right of Way Projects and increase LPA's awareness of federal reimbursement requirements where necessary. Follow-up reviews will be made as necessary to ensure this capability is maintained.

When the Region/District Right of Way Local Programs Coordinator receives a request from an LPA for qualification, he/she should notify HQ R/W Office of Local Programs in writing and ask that Audits perform the evaluation. The summary of the audit evaluation will go directly to HQ R/W and will be forwarded to the Region/District for integration into the local agency qualification request.

17.05.04.01 **Region/District Approval**

The Region/District R/W Manager or designee will approve the request (if appropriate) and notify the LPA by letter that its organization has been approved to perform right of way functions on its projects. Copies of the letter will be sent to the HQ R/W Local Programs Office Chief. At a minimum, the letter to the LPA apprising them of their qualification status should address the following primary points:

1. Effective term of the approval.
2. Specification of the functions they are receiving approval to perform.
3. Confirmation of their possession and use of the current Caltrans *R/W Manual*.
4. The LPA's obligation to inform the Department of any organizational or policy changes affecting their qualification within 7 days of the change.
5. Department will review their work for compliance.
6. Qualified status can be withdrawn if deficiencies are found and not corrected or the qualifications of the staff change to the point where they can no longer meet the minimum requirements.
7. The LPA will be invited to attend FHWA and Department-sponsored classes.

In the event the LPA's qualifications cannot be approved, the Coordinator will inform the LPA of the necessary steps which must be taken to achieve approval.

17.05.05.01 **Maintenance Procedures for Qualification Status**

The Regions/Districts will review all of their qualified LPAs on a project-by-project basis for work "ON" the State Highway System and at least every three years for work "OFF" the State Highway System to determine if staff and procedures are still adequate to perform right of way activities in the functions approved in conformance with federal and/or state regulations. The review and documentation should be completed as outlined below depending on the category.

A. Work "ON" the State Highway System

Right of way organizations that will be performing work "ON" the State Highway System involving right of way acquisition activities will be qualified on a project-by-project basis. In this category, the Coordinator will complete the following:

1. A Memorandum to File approving the Qualification for the Project including:
 - a. A statement that the LPA has performed adequately for right of way on prior projects, if applicable.
 - b. An updated organization chart for the LPA including résumés as necessary.
 - c. A statement that the Local Public Agency has adopted current Caltrans procedural manuals to be used for the project to comply with current federal laws and regulations.
2. Submission of a copy of the Memorandum and updated Organization Chart to HQ R/W Local Programs to update the qualification files.

3. Caltrans Audits and Investigations' Accounting System Evaluation, if necessary. When the Local Public Agency's accounting practices have already been evaluated, the Department's experience with the LPA may be satisfactory and, thus, an audit evaluation may not be required. Regions/Districts should only initiate requests for audit evaluations when circumstances dictate, then the request should be processed through HQ R/W Local Programs.
4. Notification of the LPA of approval in writing.

B. Work "OFF" the State Highway System

In this category are all Local Public Agencies that are performing work on federal-aid projects "OFF" the State Highway System involving right of way acquisition activities. The Coordinator will complete the following activities at least once every three years and keep the Qualification information in a file for each Local Public Agency:

1. Complete an in-depth review to determine if the LPA's organizational plan and policies and procedures have remained in substantial conformance with federal regulations. The review should encompass the areas outlined above.
2. If deficiencies are found, the Region/District should so notify the LPA and ask them to rectify the matter.
3. If the deficiencies are corrected or none are found, a summary of the review with a current organization chart should include a statement that, in the Region/District's opinion, there is reasonable assurance the LPA will perform right of way activities in compliance with requirements. The summary should also include the rationale for this opinion.
4. A copy of the memo is to be forwarded to HQ R/W Local Programs.
5. Caltrans Audits and Investigations' Accounting System Evaluation - Same as Category A.3. above.
6. The LPA is to be notified of the approval in writing.

17.05.06.01 Appraisal Review Qualification

On federal-aid projects, a formal review of the appraisal is necessary to establish the Fair Market Value for the property. (See 49 CFR 24.104.) A consultant review appraiser must have a valid general license issued by the State Office of Real Estate Appraisers (OREA) and experience in eminent domain appraisals.

If the LPA receives a qualification of Level 1 or 2 without having the staff or means to perform the appraisal review function, the agency shall hire either a qualified consultant (see Section 17.06.00.00) **or** another agency qualified to perform the review.

NOTE: It must be noted that in instances where the LPA must hire a consultant or another agency to act as review appraiser, **only** the sponsoring LPA can determine the just compensation to be paid based on the approved appraisal; another agency or consultant cannot make that determination.

17.05.07.01 **Nonqualified LPAs - Options**

Local agencies that are not qualified to perform any or all of the respective right of way functions for a project must either hire another agency which is qualified to perform those functions or retain a consultant(s) who meets the Consultant Selection Criteria discussed in Section 17.06.00.00.

As part of the review process for projects on the State Highway System, the LPA must provide work plans, timelines with milestones, and staffing plans (including their plans for contracting with consultants or another LPA) for review and concurrence prior to execution of any consultant contracts covering right of way activities. This review should be triggered by the Authorizing Document and should be initiated at the time the Cooperative Agreement is being drafted.

Nonqualified LPAs have the following options:

1. Contract with a qualified agency.
2. Contract with a qualified private consultant(s) to perform one or more right of way functions. Appraisal consultants must have a license issued by the State Office of Real Estate Appraisers; acquisition consultants must have a valid California Real Estate Brokers License or Sales License and work for a Real Estate Broker with a valid license; relocation consultants must have training and experience in relocation work under the Uniform Relocation Assistance and Real Property Acquisition Policies Act. For additional information, refer to Section 17.06.00.00 on consultant qualifications.
3. Contract with a R/W Project Management Consultant. The contract must include provisions requiring any subcontractors to meet the right of way qualification standards set forth for right of way consultants. The LPA must retain the ability to monitor and control the qualifications of any subcontractors through the contract process.
4. Utilize a mixture of LPA staff and the resources available above at Items 1 and 2.
5. Contract with a “turnkey” consultant. The contract must include provisions requiring the subcontractor meet the right of way qualification standards set forth for right of way consultants. The LPA must retain the ability to monitor and control the qualifications of subcontractors through the contract process.

17.05.08.01 **Rescinding LPA Qualification Status**

If an LPA fails to maintain qualified staff, cooperate in correcting identified deficiencies, or perform in accordance with state and/or federal requirements, the Region/District shall notify the LPA in writing that the failure will result in a loss or reduction of its qualification status as well as jeopardize federal participation in the project. If, after this notification, the LPA fails to correct identified deficiencies or continues its noncompliance with state/federal regulations, the Region/District will notify the LPA that its qualification status has been rescinded. This notification should be signed by the District Director or designee. Copies of this notification will be forwarded to HQ R/W Office of Local Programs and the FHWA Division Administrator.

NOTE: At each of the above steps in the qualification process, the LPA must be informed in writing of all approvals and denials whenever application is made or reviews are performed.

17.05.08.02 **Concurrent Penalties**

It should also be emphasized that in a number of cases failure to correct deficiencies, particularly having to do with Uniform Act violations, can have far more serious consequences. As noted in Sections 17.03.00.00 and 17.04.00.00, failure to comply with Uniform Act requirements or to correct any such violations can result in the loss of federal funding for the parcel, the entire right of way portion of the project, and/or the entire project including construction depending on the seriousness of the violation.